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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

Estate of WILLIE WILLIAM VERNON,  
Deceased.

DARLENE NEUBAUER, as Executor,  
etc.,

Petitioner and Respondent,

v.

DUNNIA VERNON,

Claimant and Appellant.

E047804

(Super.Ct.No. VPRVS003075)

OPINION

APPEAL from the Superior Court of San Bernardino County. J. Michael Welch,  
Judge. Affirmed.

Zumbrunn Law Corporation and Gregory L. Zumbrunn for Petitioner and  
Respondent.

Law Office of Stephen A. Madoni and Stephen A. Madoni for Claimant and  
Appellant.

Dunnia Ruth Vernon appeals an order denying her motion for relief from default based on her attorney's failure to file suit in a timely manner after the executor of the estate of her late former husband rejected her creditor's claim for unpaid spousal and child support and for unpaid promissory notes. We affirm the judgment.

### PROCEDURAL AND FACTUAL HISTORY

Attorney Stephen Madoni was retained to represent Dunnia Ruth Vernon (Vernon) to present a creditor's claim against the estate of Vernon's deceased ex-husband. Madoni timely filed a creditor's claim for a number of unpaid promissory notes apparently based on the couple's property settlement agreement and an amended creditor's claim for unpaid promissory notes and for unpaid child and spousal support. The executor of the estate rejected the claim on February 9, 2007. No lawsuit on the rejected claim was filed within the time limits provided in Probate Code section 9353. (We discuss the provisions of Prob. Code, § 9353 below.)

On November 8, 2007, Vernon filed a motion for relief from default pursuant to Code of Civil Procedure section 473, subdivision (b), based on attorney Madoni's affidavit stating that although the notice of rejection of the creditor's claim was received in his office on February 9, 2007, Madoni never personally saw the notice of rejection and was not aware that the claim had been rejected until September 30, 2007, when he reviewed a mandatory settlement conference brief from the estate's attorney, which referred to the rejected claim. He stated that after investigation, he concluded that a

disgruntled employee, whose job it was to place mail on his desk, had discarded the notice of rejection. He accepted that his employee's action was his responsibility.

The court denied the motion, finding that Probate Code section 9353 is a statute of limitations and that Code of Civil Procedure section 473, subdivision (b) (hereafter section 473(b)) does not provide for relief from default based on the expiration of any applicable statute of limitations.

Vernon filed a timely notice of appeal.

### LEGAL ANALYSIS

#### THE MOTION FOR RELIEF FROM DEFAULT WAS PROPERLY DENIED

##### Appealability and Standard of Review

An order denying a motion for relief from default is appealable. (*SJP Limited Partnership v. City of Los Angeles* (2006) 136 Cal.App.4th 511, 516, fn. 3.) Where the motion is based on an affidavit of attorney fault, pursuant to section 473(b), relief is mandatory if the statutory prerequisites are met. (*SJP Limited Partnership v. City of Los Angeles, supra*, at p. 516.) Where, as in this case, the applicability of the mandatory relief provision does not turn on disputed facts, the issue is a question of pure law, subject to de novo review. (*Ibid.*)

##### Section 473(b) Does Not Provide Relief From Default Based on Failure to Comply With a Statute of Limitations

As pertinent here, section 473(b) provides: "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal,

order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. . . . Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect."

In *Castro v. Sacramento County Fire Protection Dist.* (1996) 47 Cal.App.4th 927 (*Castro*), the Court of Appeal examined section 473(b) as it applies to mandatory relief from default based upon an attorney's admission of mistake, inadvertence, surprise or neglect. The court held that relief from default for attorney error is not available when the error is failure to comply with a statute of limitations. (*Castro*, at pp. 929-933.)

Before 1992, the statute applied only to "defaults," not to "dismissals." The appellant in *Castro* contended that by amending the statute in 1992 to add "dismissal" to the matters for which relief is either discretionary or mandatory, the Legislature intended to expand the scope of the statute to include relief from failure to comply with an applicable statute of limitations. (*Castro, supra*, 47 Cal.App.4th at pp. 929-930.) The court held that the Legislature did not intend to extend the scope of the statute in that

manner. It reasoned that “the Legislature did not intend by its ‘noncontroversial’ 1992 amendments to section 473 to . . . create a loophole through which a plaintiff may escape the bar of the statute of limitations. Statutes of limitations are a fundamental aspect of our legal system. They are ““vital to the welfare of society and are favored in the law.”” [Citation.] ‘[S]tatute[s] of limitations traditionally play[ ] a valid role in laying stale causes to rest and providing finality and repose without the need for any court adjudication. [Citations.]’ [Citation.] Had the Legislature intended to effect such a radical change in legal procedure as mandatory relief from the operation of the statute of limitations, it would have expressly said so in unambiguous language.” (*Id.* at p. 933.)

The court in *Castro* relied on the decision in *Hanooka v. Pivko* (1994) 22 Cal.App.4th 1553, 1563 (*Hanooka*), which held that the extension of mandatory relief for dismissals resulting from attorney error under section 473(b) is not available when the judgment of dismissal is for failure to comply with the medical malpractice statute of limitations set forth in Code of Civil Procedure section 340.5. (*Castro, supra*, 47 Cal.App.4th at p. 933.) Citing *Kupka v. Board of Administration* (1981) 122 Cal.App.3d 791, 794-795, the court in *Hanooka* explained that “Statutes of limitations are generally regarded as inflexible” and are enforced regardless of personal hardship, and that although “some limitations statutes provide for an extension of the limitation period on a showing of good cause, which has been interpreted as equivalent to a showing under section 473 . . . [citation], [w]here the statute lacks an explicit provision for extension, ‘ . . . it must be inferred the Legislature did not intend to permit relief on grounds of good

cause or under section 473. [Citation.]”’ (*Hanooka*, at p. 1561; see *Castro*, *supra*, 47 Cal.App.4th at p. 930; accord, *Sprague v. County of San Diego* (2003) 106 Cal.App.4th 119, 133-135; see also *Nogart v. Upjohn Co.* (1999) 21 Cal.4th 383, 395 [statute of limitations operates “conclusively across the board, and not flexibly on a case-by-case basis”].)

We agree with the reasoning of the cases cited above. Vernon contends, however, that Probate Code section 9353 is not a true statute of limitations but is merely a procedural device for controlling probate proceedings. She contends that its purpose is not to change the law—Family Code section 291—which provides that there is no statute of limitations for claims of unpaid child or spousal support.

Vernon is correct that Family Code section 291 provides that a judgment or order for child or spousal support is enforceable until paid in full or otherwise satisfied, without limitation. (Fam. Code, § 291, subds. (a), (g).) However, this is true only during the lifetime of the person who owes the support: Subdivision (e) of that section provides that after the death of the judgment debtor, the Probate Code rather than the Family Code governs the enforcement of a judgment for spousal or child support. (Fam. Code, § 291, subd. (e).)<sup>1</sup>

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<sup>1</sup> Family Code section 291 provides:

“(a) A money judgment . . . including a judgment for child, family, or spousal support, is enforceable until paid in full or otherwise satisfied. [¶] . . . [¶] (e) Nothing in this section supersedes the law governing enforcement of a judgment after the death of the judgment creditor or judgment debtor. [¶] . . . [¶] (g) As used in this section, ‘judgment’ includes an order.”

We also disagree with Vernon that Probate Code section 9353 is not a true statute of limitations. In pertinent part, Probate Code section 9353 provides as follows:

“(a) Regardless of whether the statute of limitations otherwise applicable to a claim will expire before or after the following times, *a claim rejected in whole or in part is barred as to the part rejected unless, within the following times, the creditor commences an action on the claim* or the matter is referred to a referee or to arbitration:

(1) If the claim is due at the time the notice of rejection is given, 90 days after the notice is given.

(2) If the claim is not due at the time the notice of rejection is given, 90 days after the claim becomes due.”<sup>2</sup> (Emphasis added.)

The italicized language unambiguously states that a lawsuit on a rejected claim is barred unless it is commenced within a specified period of time. The statute does not provide for an extension upon a showing of good cause, nor does it provide for any discretion in its application. This is the essence of a statute of limitations. (See *Sprague v. County of San Diego*, *supra*, 106 Cal.App.4th at p. 135; *Hanooka*, *supra*, 22 Cal.App.4th at p. 1561.)

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<sup>2</sup> A claim is not “due” for purposes of Probate Code section 9353 and its predecessor, Probate Code former section 714 (see Historical and Statutory Notes, 53A West’s Ann. Prob. Code (1991 ed.) foll. § 9353, p. 481), if it is contingent, i.e., if the condition which would mandate payment has not yet occurred. (See *Fox v. Dehn* (1974) 42 Cal.App.3d 165, 170-171.) Claims for spousal or child support payments which have accrued at the date of the decedent’s death are due. (*Newhall v. Newhall* (1964) 227 Cal.App.2d 800, 810.)

Citing *Berger v. O'Hearn* (1953) 41 Cal.2d 729, 732 (*Berger*), Vernon contends that the purpose of “the statute” is “to control probate procedure and not to change the statute of limitations for valid claims.” *Berger* addressed the relationship between Code of Civil Procedure former section 353 and Probate Code former section 714 (the predecessor of Prob. Code, § 9353) to determine whether the statute of limitations had expired prior to rejection of the appellant’s claim. The court held that Code of Civil Procedure former section 353 was the “sole provision affecting the period of limitation upon a cause of action in the event of . . . the death of the person liable” and that Probate Code former section 714 merely controlled probate procedures. (*Berger*, at p. 732.) However, as discussed in *Anderson v. Anderson* (1995) 41 Cal.App.4th 135, the statutory scheme pertaining to limitations on actions for liabilities of a decedent was amended in 1987, and the rules stated in *Berger* no longer apply. (*Anderson v. Anderson, supra*, at pp. 138-140.) Under the current statutory scheme, the filing of a claim tolls the underlying statute of limitations until the creditor’s claim has been rejected, and after rejection, “the creditor has three months within which to bring an action, regardless of the time otherwise remaining on the statute of limitations.” [Citations.]” (*Id.* at p. 140, italics omitted.) Thus, Probate Code section 9353 and the related statutes not only control the procedure for probate creditors’ claims, they conclusively determine the time limits within which an action must be filed after rejection of a claim.

Vernon also contends that “there is no rule in California that a claim with *no* statute of limitations can be abrogated or limited by the Probate Code.” This is incorrect;



Family Code section 291 does precisely that. Family Code section 291 was repealed and then enacted in its current form in 2006. Prior to its repeal, different types of family law orders and judgments involving money and property were subject to different periods of enforceability. The current version of the statute was enacted to state explicitly that all such judgments are enforceable “until paid in full or otherwise satisfied.” (Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2126 (2005 Reg. Sess.) June 13, 2006, p. 2.) To address the question “as to what happens to unenforced judgments upon the death of either the debtor or creditor” in light of the otherwise indefinite enforcement period, the newly enacted Family Code section 291 provided that “nothing in this section supersedes the law governing enforcement of a judgment after the death of the judgment creditor or judgment debtor.” (Sen. Com. on Judiciary, *supra*, at pp. 7-8; Fam. Code, § 291, subd. (e).) This clearly reflects the Legislature’s intent to apply Probate Code section 9353 to claims which would otherwise be enforceable indefinitely.

Finally, we address Vernon’s request that we “consider the public policy of not requiring the client to suffer an attorney’s mistake.” We recognize that Code of Civil Procedure section 473, subdivision (b) was enacted for that purpose. However, as we have discussed elsewhere, statutes of limitations also serve an important function and are enforced inflexibly and without regard to personal hardship, and are not subject to relief pursuant to Code of Civil Procedure section 473, subdivision (b). (*Castro, supra*, 47 Cal.App.4th at p. 933, and cases cited therein.) Accordingly, although we are sympathetic to the hardship both the attorney and the client may suffer as a result of the

actions of a disgruntled law office employee, we are not at liberty to ignore the time limits imposed by Probate Code section 9353.

DISPOSITION

The order denying relief under Code of Civil Procedure section 473, subdivision (b) is affirmed. Costs on appeal are awarded to the Estate of Willie William Vernon.

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/s/ McKinster  
Acting P.J.

We concur:

/s/ Gaut  
J.

/s/ King  
J.